



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY CRIVELLO RUSSO,

Plaintiff,

-v-

JOHN DIMILIA, *sergeant*, DARRELL ALGARIN,
police officer, and MICHAEL GUEDES, *police*
officer,

Defendants.

Case No. 07-CV-5795 (KMK)(MDF)

ORDER

KENNETH M. KARAS, District Judge:

On June 12, 2008, this Court issued an Order ("June 12 Order") dismissing all claims in Plaintiff's Amended Complaint other than Plaintiff's excessive force claim against Defendants John Dimilia, Darrell Algarin, and Michael Guedes.¹ On July 8, 2008, Plaintiff filed a "Request for Leave to Amend Complaint" in which it appears that Plaintiff seeks to replead the same claims dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) by the June 12 Order.

A court may deny a motion to amend where the amendment would be futile, as measured by whether the proposed amended complaint could withstand a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 87-88 (2d Cir. 2002). Here, Plaintiff's submission does not offer any argument as to why his repleaded claims would not fail for the same reasons discussed in the Report and Recommendation issued by Magistrate Judge Mark D. Fox on February 11, 2008, and in the June 12 Order. Therefore, Plaintiff's Motion for Leave to Amend his Complaint is DENIED.

SO ORDERED.

Dated: July 8, 2008
White Plains, New York

KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

¹ In light of the dismissed Defendants, this case is recaptioned as in this Order.